

R.D. # 0006-03
Newark, NJ

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22**

CAMPTOWN BUS LINES, INC.¹
Employer

and

CASE 22-RC-12357

RWDSU, LOCAL 108, AFL-CIO²
Petitioner

DECISION AND ORDER

1. Introduction

The Petitioner seeks to represent a unit of school bus drivers employed by the Employer. The Employer contends that the only appropriate unit for purposes of collective bargaining should include its bus attendants with its drivers. There is no history of collective bargaining for any of the employees involved here. I find, for the reasons described below, that a unit limited to only school bus drivers is not appropriate and I will dismiss the petition as the Petitioner indicated that it was not willing to proceed in any other unit.

¹ The name of the Employer appears as amended at the hearing.

² The name of the Petitioner appears as amended at the hearing.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding,³ I find:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.⁴
3. The Petitioner claims to represent certain employees of the Employer.⁵
4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act for the following reasons:

2. Facts

The Employer's Operations

The Employer provides school bus transportation services for children in Newark and East Orange, New Jersey from its Newark, New Jersey facility.⁶ It has contracted with Essex County Educational Services Commission (Commission) to provide this service for children with "special needs." The Employer employs

³ The Petitioner's facsimile transmission of its brief dated July 25, 2003, is rejected as it fails to comport with Section 102.114(g) of the Board's Rules and Regulations, that provides, *inter alia*, that briefs are unacceptable if submitted by facsimile transmission. A brief filed by the Employer was fully considered.

⁴ The Employer is engaged in providing school bus transportation services from its Newark, New Jersey facility, the only facility involved herein.

⁵ The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

⁶ The Employer also provides coach bus transportation which is an aspect of its business not described in the record.

approximately 65 school bus drivers and 80 bus attendants in the performance of its duties under its contract with the Commission. In this regard, the Employer picks up these special needs children from their homes in the morning, takes them to school and returns them to their homes in the afternoon.

Each school bus has a driver and a bus attendant who work as a team between the hours of 7:00 am and 9:00 am and again between 2:00 pm and 4:00 pm each school day during the period from September through June of each year. Bus attendants are responsible for assisting children on and off the busses and controlling and maintaining safety and behavior while in their care.

With respect to physically disabled children such as those in wheelchairs, both drivers and attendants are trained by the Employer in the use of lifts and tie down equipment in manipulating their ingress and egress from busses. Thus for example, while an attendant exits the bus to escort a wheelchair bound child from his home to the bus, the driver leaves his seat and maneuvers the wheelchair lift or physically receives the child from the attendant.

School bus drivers are required to possess commercial drivers licenses and maintain good driving records. Both drivers and attendants are subject to the same physical health requirements and State and Federal mandated background checks for suitability of employment. Before the school year begins, drivers and attendants, as a team, are trained together as to their routes including test runs. They are provided with two-way radios in order to communicate with each other. Drivers and attendants are guaranteed 4 hours of employment per work day, share the same hours, schedules and holidays. Neither drivers or attendants receive fringe benefits. They also work

together in disengaging the child alert system maintained on busses which ensures that no child is left on the bus unattended. Drivers and attendants have the same supervisors, attend joint employee meetings, are hourly paid on the same day, are trained in the same emergency bus evacuation procedures and are eligible to receive yearly Christmas and good attendance bonuses.⁷

The record reveals that drivers and attendants share the same waiting room and bathroom facilities at the Employer's Newark facility. Generally, the driver and attendant remain together as a team throughout the school year. Drivers earn between \$12.50 and \$14 per hour whereas attendants earn between \$8.50 and \$9 per hour. The record further discloses that since 1998, six (6) attendants have become drivers and that currently two (2) other attendants are training to become drivers.

3. Analysis

The Board, aware of the complex nature of modern industry, has rejected the application of any fixed rule for the unit placement of drivers and has applied a case-by-case analysis in this area. *E. H. Koester Bakery Co., Inc.*, 136 NLRB 1006 (1962). In *Marks Oxygen Co.*, 147 NLRB 228 (1964), the Board further clarified its *Koester* policy by deciding that when considering the unit placement of drivers, it would take into account other basic policies such as 1] the Petitioner's desire as to the unit is always a relevant consideration and 2] it is not essential that a unit be the most appropriate unit. See also *Mc-Mor-Han Trucking Co.*, 166 NLRB 700 (1967); *Pacemaker Mobile Homes, a Division of Lonergan Corp.*, 194 NLRB 742 (1971); *Overnite Transportation Co.*, 331 NLRB 662 (2000); *Home Depot USA, Inc.*, 331

⁷ Drivers are also eligible to receive safe driving bonuses.

NLRB 1289 (2000). In making unit determinations, the Board's task is not to determine the most appropriate unit, but simply to determine an appropriate unit. *P.J. Dick Contracting*, 290 NLRB 150 (1988). In so doing, the Board looks "first to the unit sought by the petitioner. If it is appropriate, [the] inquiry ends. If, however, it is inappropriate, the Board will scrutinize the Employer's proposals." *Dezcon, Inc.*, 295 NLRB 109, 111 (1989).

Although the Board has found in appropriate cases that drivers may constitute separate, appropriate units, such findings are based upon evidence that the drivers constitute a functionally distinct and homogeneous group whose duties and interests are different and distinct from those of the Employer's other employees. In this case there is no basis for such a conclusion. As shown above, the drivers regularly spend all their work time with the attendants. They are commonly supervised, are paid on the same basis and subject to the same terms and conditions of employment. In these circumstances, I find that the drivers and the attendants share a close community of interests and are so functionally integrated as to preclude the representation of the drivers in a unit apart from the attendants. Accordingly, I find that the drivers do not constitute a separate appropriate unit. *Calco Plating, Inc.*, 242 NLRB 1364 (1979); *Transway, Inc.*, 153 NLRB 885 (1965); *Standard Oil Company*, 147 NLRB 1226 (1964).

ORDER

In view of the Petitioner's position that it will not proceed to an election in any unit other than the unit it seeks, it is hereby **ORDERED** that the petition filed herein be, and same hereby is, **DISMISSED**.⁸

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **August 11, 2003**.

Signed at Newark, New Jersey this 28th day of July 2003.

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⁸ In view of this determination, it is unnecessary for me to decide on the propriety of a mail ballot election as requested by the Petitioner.